A **BUKIT LENANG DEVELOPMENT SDN BHD**

v.

TELEKOM MALAYSIA BERHAD & ORS (NO 2)

B HIGH COURT MALAYA, JOHOR BAHRU
GUNALAN MUNIANDY JC
[CIVIL SUIT NO: 22-766-2007]
14 MAY 2014

C ***TORT:*** *Trespass to land - Encroachment - Erection of electricity poles - Trespass of cables or wires into land - Supply of electricity to squatters - Commencement of civil suit against defendant for trespass onto land - Elements of trespass - Whether proven - Whether defendant had full knowledge that structures had encroached and trespassed onto land -* D *Whether there was deliberate concealment of facts obstructing course of justice - Whether act of suppressing and withholding material evidence misled court - Whether non-disclosure amounted to contempt of court*

CIVIL PROCEDURE: *Contempt of court - Application for committal* E *- Commencement of civil suit arising from trespass onto land - Erection of electricity poles - Trespass of cables or wires onto land - Supply of electricity to squatters - Whether defendant had full knowledge that structures encroached and trespassed onto land - Whether there was deliberate concealment of facts obstructing course of justice - Whether act* F *of suppressing and withholding material evidence misled court - Whether non-disclosure amounted to contempt of court*

The second defendant, Tenaga Nasional Berhad ('C1'), had erected electricity poles and its electricity cables or wires had trespassed on the plaintiff's land ('the subject land'), prompting the G latter to commence a civil suit against the former for trespass onto land. C1 then withheld any information as to whether it had supplied electricity to the squatters on the subject land, taking the position that it did not have any information on this matter. C3, a licensed land surveyor called by C1 as a witness at the trial, H testified that he had never visited the subject land as he was tasked to prepare a pre-computation plan ('PCP') for the subject land only in order to confirm its location. According to C3, he had no knowledge of whether C1's structures had encroached and trespassed the subject land. However, in contrast to the evidence I of both C1 and C3, the applicant procured evidence which disclosed that C1 had engaged C3 to conduct a detailed survey

plan ('DSP') on the subject land to determine placement of electricity poles and cables. Based on the DSP, C1 and C3 had full knowledge that the structures had encroached and trespassed onto the subject land. In the present application, the applicant sought to commit C1 and C3 for contempt of court for (i) C1's suppression of material evidence to mislead the court in order to gain an unlawful advantage; and (ii) false evidence by C3 to the court in testifying that he had no knowledge of whether the location of the electricity lines and poles were on the subject land. The defence by C1 and C3 was that neither contemnor had committed perjury by not disclosing the existence of the DSP as they had no intention to give false testimony or to mislead. The contemnors had merely exercised their rights to elect not to divulge evidence that might have been adverse to the case of C1 and not to volunteer evidence that was not asked for. C1 submitted that it was protected by litigation privilege and was exempted from the disclosure of the DSP. C3's defence was that he had not given or intended to give false evidence as he was only a surveyor and was not a party interested in the outcome of the proceedings. C3 further submitted that his evidence was confined to the PCP and he was not required to testify nor questioned on any other matters including the DSP.

Held (allowing application):

(1) The fact that a detailed survey had been conducted, which would have invariably necessitated visits to and inspection of the site, was completely withheld. The contemnors had misled the court into believing that only a PCP, which did not entail any visit to or physical aspect of the subject land, was prepared. The DSP, on the other hand, was obviously of a wholly different character, requiring a complete inspection of a site that would have, without a doubt, revealed the crucial fact of the proceedings which was whether C1's infrastructure had encroached onto the subject land. (para 21)

(2) C3 had completely refrained from even mentioning the DSP. His evidence was not merely false testimony but had crossed the line to the point of deliberate concealment of material facts amounting to obstruction or frustration of the course of justice. (para 21)

(3) From the false and misleading testimony and the suppression of vital and material evidence, there was patently a manifestation of some form of intention on the contemnors' part to obstruct or interfere in the course of justice. They had evinced an intention to do so by deliberately withholding to give a real or truthful answer to a vital issue in dispute that was not merely perjury simpliciter but took the case into the realm of contempt. Despite the invocation of litigation privilege, the fact of deliberate non-disclosure and suppression of evidence, that was by design and intentional, was undeniable. (para 24)

(4) Non-disclosure of the fact that a DSP was obtained was sufficient to constitute contempt as it was likely or tended to interfere in the due and proper administration of justice. No attempt was made or steps taken by C1 as the body which engaged C3 and produced him as a witness, to correct the highly misleading evidence of C3 on a very material fact in the case. (para 24)

Case(s) referred to:

In Re Bramblevale Ltd [1970] 1 Ch 128 ***(refd)***

Jaginder Singh & Ors v. Attorney-General [1983] 1 CLJ 69; [1983] CLJ (Rep) 176 FC ***(refd)***

Loot Ting Yee v. Tan Sri Sheikh Hussain Sheikh Mohamed & Ors [1982] CLJ 66A; [1982] CLJ (Rep) 203 FC ***(refd)***

Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd [2002] 4 CLJ 401 FC ***(refd)***

Murray Hiebert v. Chandra Sri Ram [1999] 4 CLJ 65 CA ***(refd)***

Re B (JA) (An Infant) [1965] 1 Ch 1112 ***(refd)***

Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012] 2 CLJ 849 FC ***(refd)***

Three Rivers DC v. Bank of England (No. 6) [2005] 1 AC 610 ***(refd)***

Vernon v. Bosley (No 2) [1997] 1 All ER 614 ***(refd)***

Legislation referred to:

Rules of Court 2012, O. 52 r. 3

Other source(s) referred to:

Oswald's Contempt of Court, 3rd edn, p 6

For the plaintiff - Thomas Philip (Clinton Tan with him); M/s Thomas Philip
For the 2nd defendant/1st contemnor - Steven Thiru (Gurmel Singh, David Matthew, Gregory Das with him); M/s Balvinder Singh Kenth
For the 3rd contemnor - Gopal Sreenevasan (PL Leong with him); M/s Sreenevasan Young

Reported by Najib Tamby

JUDGMENT

Gunalan Muniandy JC:

[1] This application to commit for contempt of court the first, second, third and fourth proposed contemnors ('C1, C2, C3 and C4') arises out of a civil suit commenced by the plaintiff/applicant, Bukit Lenang Development Sdn Bhd ('the applicant') against three defendants, namely, Telekom Malaysia Bhd, Tenaga Nasional Bhd, ('TNB') and the Johor Water Corporation known as SAJ Holdings Sdn Bhd for trespass onto land belonging to the plaintiff. The plaintiff having withdrawn the suit against the first and third defendants, the trial proceeded only against TNB and the court having found TNB liable for trespass as pleaded entered judgment against TNB for the plaintiff with damages to be assessed.

[2] This contempt action was proceeded with only against C1 and C3, C1 being TNB and C3 being a witness called by TNB at the trial. C3 was a licensed land surveyor registered with the Board of Surveyors, Malaysia. At the trial of the suit, the case against TNB was that it had erected electricity poles and its electrical cables or wires had trespassed on the subject land. TNB withheld any information as to whether it had supplied electricity to the squatters on the subject land, taking the position that it did not have any information on this matter.

[3] C3 testified as a witness of fact for TNB at the trial pertaining to a survey plan that he had prepared on the subject land on behalf of one Juruukur Abadi that was engaged by TNB to carry out the survey. In essence, the evidence of C3 that was the subject of this contempt action was that he had only prepared a pre-computation plan ('PCP') dated 1 February 2005 in regard to the survey of the subject land for the express purpose of confirming the location of the subject land as instructed by C1. This plan was based on information extracted from a certified plan approved by the Johor Director of Surveys and records kept by the Land Office. He had never visited the subject land as C1 had not given any instructions from the year 2005 until 26 April 2011 to visit or inspect the subject land. No one from Juruukur Abadi had done so for the purpose of the survey report. Hence, C1 was not in a position to determine whether the squatters on the subject land were supplied electricity by TNB and whether TNB was then trespassing on the land.

[4] The applicant subsequently procured evidence that disclosed that in actual fact C1 had engaged C3 to conduct a detailed land survey on the subject land to determine the placement of its electricity poles and cables. The detailed survey plan ('DSP') which was the result of the said survey was produced as evidence in this action ('exh. ZJ4'). As instructed, C3 had prepared the DSP showing with great specificity the location and placement of TNB's electricity poles and cables/wires on individual parcels on the subject land. The survey was conducted by employees of Juruukur Abadi and ultimately approved by C3. In contrast to the evidence of C3 and TNB's other material witnesses, the DSP disclosed unequivocally the exact location of TNB's structures on the subject land facilitating connection of electricity supply to the occupiers. It would appear from the DSP that TNB and C3 had at the material time full knowledge that TNB's structures had encroached and trespassed onto the subject land.

[5] On 25 May 2013, the applicant's solicitors lodged a police report upon becoming aware of the above detailed survey. They had sighted a copy of the DSP at the office of the Malaysian Anti-Corruption Commission ('MACC'), who were believed to have obtained the copy from the possession of Juruukur Abadi.

Law On Contempt Of Court

[6] In *Loot Ting Yee v. Tan Sri Sheikh Hussain Sheikh Mohamed & Ors* [1982] CLJ 66A; [1982] CLJ (Rep) 203; [1982] 1 MLJ 182 the Federal Court dealt *inter alia* with the question for the court's determination in a case of contempt. Raja Azlan Shah Ag LP (as His Highness then was) propounded the test to be this:

> We feel that the real question for the court in this case to decide whether there is contempt, is whether the risk of prejudice to a fair and proper trial of the pending legal proceedings is serious or real or substantial. That is an application of the ordinary *de minimis non curat lex* principle – the law does not concern itself with trifles. Intent alone is insufficient to establish contempt (see *R v. Ingrams & Ors., Ex parte Goldsmith*.

[7] The Federal Court in *Tan Sri Dato (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849; [2012] 3 MLJ 458 dealt extensively with the evolution of the law of contempt and its present state. It was held that a good starting point would be to look at the definition of contempt itself. For this purpose the general definition of contempt of court given by *Oswald's Contempt of Court* (3rd edn) at p. 6 as follows was adopted:

> To speak generally, contempt of court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties, litigants, or their witnesses during the litigation.

His Lordship Arifin Zakaria CJ in delivering the judgment of the Federal Court went on to explain:

> Article 126 of the Federal Constitution empowers the Federal Court, the Court of Appeal and the High Courts to punish any contempt of itself. This is repeated in s. 13 of the Courts of Judicature Act 1964. However since the RFC has no procedural provision on committal, therefore, by virtue of r. 3 of the RFC, the procedure under O. 52 of the RHC may be adopted. Thus, an applicant can bring contempt proceedings *via* O. 52 of the RHC without having to go through the Criminal Procedure Code or the Penal Code even if the relief sought is imprisonment (see *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240; *Arthur Lee Meng Kwang v. Faber Merlin Malaysia Bhd & Ors* [1986] 2 MLJ 193 and *Chung Onn v. Wee Tian Peng* [1996] 5 MLJ 521).

[8] Having traced the traditional classification of contempt of court in England as being either civil or criminal wherein the general approach had been that a criminal contempt meant an act that so threatens the administration of justice that it requires punishment whereas by contrast civil contempt involved disobedience of a court order, His Lordship observed:

> Contempt has been reclassified either as (1) a specific conduct of contempt for breach of a particular court order; or (2) a more general conduct for interfering with the due administration of justice. This classification is better explained in the words of Sir Donaldson MR in *Attorney-General v. Newspaper Publishing Plc*, *(supra)* at p. 362:
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> > Of greater assistance is the reclassification as (a) conduct which involves a breach, or assisting in the breach, of a court order; and (b) any other conduct which involves an interference with the due administration of justice, either in a particular case or, more generally, as a continuing process, the first category being a special form of the latter, such inference being a characteristic common to all contempts per Lord Diplock in *Attorney-General v. Leveller Magazine Ltd* [1979] AC 440 at p. 449.
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> This reclassification was adopted by the Court of Appeal in *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549; [2001] 4 MLJ 577 (CA).

[9] In *Monatech (M) Sdn Bhd v. Jasa Keramat Sdn Bhd* [2002] 4 CLJ 401; [2002] 4 MLJ 241 the Federal Court also adopted with approval the general definition of contempt of court provided by *Oswald's Contempt of Court* (3rd edn) as a good guide. The court went on to hold:

> What therefore is contempt of court, 'is interference with the due administration of justice' – per Nicholls LJ at p 923 of *Attorney-General v. Hislop & Anor* [1991] 1 All ER 911 (CA).
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> In view of the generality of the phrase 'interference with the due administration of justice', we are of the view that the categories of contempt are never closed. To that extent we respectfully endorse the statement made by Low Hop Bing J, in *Chandra Sri Ram v. Murray Hiebert* [1997] 3 MLJ 240 at p. 270:
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> > The circumstances and categories of facts which may arise and which may constitute contempt of court, in a particular case, are never closed. This is the same position as in the case of negligence in which the scope for development is limitless. Contempt of court may arise from any act or form whatsoever, ranging from libel or slander emanating from any contemptuous utterance, news item, report or article, to an act of disobedience to a court order or a failure to comply with a procedural requirement established by law. Any of these acts, in varying degrees, affects the administration of justice or may impede the fair trial of *sub judice* matters, civil or criminal, for the time being pending in any court.
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> > The particular matrix of the individual case is of paramount importance in determining whether a particular circumstance attracts the application of the law of contempt. Hence, a positive perception of the facts is a prerequisite in deciding whether or not there is any contravention necessitating the invocation of the law of contempt.

[10] It is, thus, settled law that any conduct that involves interference with the due administration or course of justice whether in a particular case or more generally as a continuing process constitutes contempt of court. To be punishable, it must pose a serious, real or substantial risk of prejudice to a fair and proper trial of pending legal proceedings. It is also trite law that strict adherence to all procedural safeguards prescribed by law is vital in committal proceedings for contempt which are penal in nature. This must necessarily be so as committal is indeed a very serious matter as it involves deprivation of a person's liberty on

being found guilty of and convicted for contempt. The courts are required to proceed very carefully before making an order to commit the contemnor to prison. (Cross J in *Re B (JA) (An Infant)* [1965] 1 Ch 1112).

[11] On the burden of proof for contempt of court, the Federal Court in *Tan Sri Dato' (Dr) Rozali Ismail & Ors (supra)* cited with approval *In Re Bramblevale Ltd* [1970] 1 Ch 128 where Lord Denning MR reaffirmed the settled principle as follows:

> A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt (see Lord Denning MR in at p. 137).

Analysis And Finding

[12] Having regard to the facts and evidence set out above, the contempt of court alleged to have been committed in this case is in the form of false testimony by C3 on behalf of C1 and suppression of material evidence to mislead the court in order to gain an unlawful advantage in the case of C1 in defending the plaintiff's claim referred to as 'the scheme'. C1 (second defendant) was alleged to have suppressed material evidence, namely, the detailed survey and had further misrepresented the truth as to the existence of material evidence revealing the installation of infrastructure for the supply of electricity by TNB to the squatters occupying/trespassing on the subject land throughout the proceedings, including at the trial. In doing so, C1 was alleged to have directly and/or indirectly interfered with the due administration of justice and had, thereby, committed contempt of this court.

[13] As for C3, the charge preferred against him in the statement pursuant to O. 52 r. 3 of the Rules of Court 2012 ('ROC') is reproduced below for convenience:

> The Third Proposed Contemnor had deliberately, willfully and with the intention to mislead the Court, thereby directly and/or indirectly interfered with the administration of justice and committed contempt of this Honourable Court in that he had:
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> (i) Condoned or agreed with the Scheme and its implementation;

(ii) Given false evidence to the Court in testifying to the effect that he had no knowledge of whether the location of the First Proposed Contemnor's electricity lines and poles were on the Subject land; and/or

(iii) Deliberately suppressed material evidence by concealing the Detailed Survey.

[14] For the charge of contempt to succeed in the context of the facts of the instant case and the charges preferred against C1 and C3, it would not suffice to merely prove false testimony or perjury but that the impugned testimony was given for the purpose of obstruction or frustration of the administration of justice and had that effect. Specifically, what is required to be proved is an "evinced intention to interfere in the course of justice". (See *Jaginder Singh & Ors v. Attorney General* [1983] 1 CLJ 69; [1983] CLJ (Rep) 176; [1983] 1 MLJ 71 FC). This then is the crux of the question that calls for consideration and determination in this case. In *Jaginder Singh & Ors v. Attorney General (supra)*, the Federal Court held, *inter alia*, as follows:

> The facts of the present case themselves demonstrate the special danger in blurring the distinction between perjury and contempt. A case of contempt by false testimony is relatively rare. In general, such false testimony will result in the party or witness being liable to prosecution for perjury. Contempt of court would lie not only in the false testimony but in the obstruction or frustration of the administration of justice. What is required is "an evinced intention" to interfere with the course of justice. That, in our opinion, is what contempt of court is all about. The approach to be taken in such a case as the present was considered by the High Court or Australia in *Coward v. Stapleton* (1953) 90 CLR 573. …
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> What does emerge as a general proposition from *Coward v. Stapleton* is that "there must be a manifestation in some form of an intention on the part of the witness not to give a real answer", a finding that takes the case across the borderline that separates perjury from contempt. False testimony, together with a refusal to answer questions amounts to an obstruction of the administration of justice which is punishable as a contempt; false testimony, without more, does not.

[15] The above pronouncements from the judgment of the Federal Court are highly pertinent to the present factual matrix and the charges that the contemnors are facing.

[16] It is settled law that the standard of proof required for conviction on a charge of contempt is the criminal standard or proof beyond reasonable doubt. The following are essential elements that must be shown to sustain the charge: A

(i) The manifestation of some form of intention on the part of the contemnor not to give a real or truthful answer; B

(ii) The false testimony, together with a refusal to answer questions which amounts to the obstruction of the due administration of justice that is punishable as an act of contempt. C

[17] It would be sufficient if together with the false testimony if the contemptuous act was likely or tended in any way to interfere with the proper administration of justice. In this regard, breach of the fundamental duty not to mislead the court until judgment is delivered is a serious consideration. D

[18] At the core of the present charges of contempt is the non-disclosure by the proposed contemnors of the existence of a vital piece of evidence in regard to the claim by the applicant in the form of the detailed survey plan ('DSP') which was the result of a complete survey carried out on the subject land carried out by Juruukur Abadi as the firm of surveyors appointed by C1 to conduct the detailed survey. As the DSP was prepared by the employees of Juruukur Abadi under the supervision of C3 and approved by him, its existence and scope were well within the knowledge of C3 who must be presumed to have been aware of its obvious relevance to the applicant/plaintiff's case. The non-disclosure and withholding of this evidence before the court was not disputed. The defence was that neither contemnor had committed perjury by not disclosing the existence of the detailed survey as they had no intention to give false testimony or to mislead the court and to interfere in its duty to dispense justice. The contemnors had merely exercised their right to elect not to divulge evidence that may have been adverse to the case of C1 and chosen not to volunteer evidence that was not asked for. E F G H

[19] C1's defence, *inter alia*, to the charge was that it was protected by litigation privilege and thus, exempted from disclosure of the DSP which was plainly material evidence pertinent to the central issues in dispute in the suit. C3's defence was that he had at no instance given or intended to give false testimony as he was, I

amongst others, only the appointed surveyor and not a party interested in the outcome of the proceedings and did not stand to benefit from the alleged contemptuous act. He was merely called by the first defendant as a formal witness for the primary purpose of producing only the pre-computation plan ('PCP') that he had prepared on the former's instructions. As such his evidence was confined to the PCP and he was not required to testify nor questioned on any other matter including the DSP. The explanation proffered by him that he was unsure of the plans that were referred to at the trial during cross-examination and had just assumed that the court was only concerned with the PCP wholly lacked credibility. A perusal of the transcript showed that the explanation to justify his stance was incredible and ought to be rejected outright.

[20] The concept of litigation privilege was explained by the House of Lords in the leading case of *Three Rivers DC v. Bank of England (No. 6)* [2005] 1 AC 610 where Lord Scott observed:

> The modern case law on legal professional privilege has divided the privilege into two categories, legal advice privilege and litigation privilege. Litigation privilege covers all documents brought into being for the purposes of litigation. Legal advice privilege covers communications between lawyers and their clients whereby legal advice communications between lawyers and their clients whereby legal advice is sought or given. In *In re L (A Minor) (Police Investigation: Privilege)* [1997] AC 16, 26 Lord Jauncey of Tullichettle described litigation privilege as "essentially a creature of adversarial proceedings" and held that the privilege could not be claimed in order to protect from disclosure a report prepared for use in non-adversarial proceedings. Lord Lloyd of Berwick and Lord Steyn, at pp. 30 and 37, expressed their agreement. The Bingham Inquiry could not have been described as adversarial. It was, as inquiries invariably are, an inquisitorial proceeding. It was no doubt with *In re L* in mind that the Bank did not claim that the documents of which disclosure was being sought were entitled to litigation privilege. The Bank took its stand on legal advice privilege. As to that, the Bank claimed privilege for all documents prepared for at least the dominant purpose of obtaining or recording legal advice from Freshfields or counsel. In para. 30 of his judgment Tomlinson J accepted this claim. He said:
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> > In my judgment an internal confidential document, not being a communication with a third party, which was produce or brought into existence with the dominant purpose that it or its contents be used to obtain legal advice is privileged from production.

In the same case Lord Rodger elaborated as follows on the concept:

> Litigation privilege relates to communications at the stage when litigation is pending or in contemplation. It is based on the idea that legal proceedings take the form of a contest in which each of the opposing parties assembles his own body of evidence and uses it to try to defeat the other, with the judge or jury determining the winner. In such a system each party should be free to prepare his case as fully as possible without the risk that his opponent will be able to recover the material generated by his preparations. In the words of Justice Jackson in *Hickman v. Taylor* (1947) 329 US 495, 516, "discovery was hardly intended to enable a learned profession to perform its functions either without wits or on wits borrowed from the adversary."

[21] Whilst it is true that on principle litigation privilege may be invoked by a litigant to protect from disclosure reports and documents prepared for use in adversarial proceedings, as in the present instance, it is crucial to note that the allegation central to the contempt charges in this case is the deliberate concealment and suppression of information that a detailed survey was done on the subject land. It is not so much the concealment of the report (DSP) itself and its contents and findings. The fact that a detailed survey had been conducted, which would have invariably necessitated visits to and inspection of the site, was completely withheld from the court. To put it concisely, it was gist alleged that the contemnors had misled the court into believing that only a PCP, which was by its description itself merely preliminary in nature that did not entail any visit to or physical inspection at the site was prepared. A detailed survey, on the other hand, was obviously of a wholly different character requiring a complete inspection of the site that would have without doubt revealed whether TNB's infrastructure had encroached onto the subject land, which was a crucial fact in issue in the proceedings. A significant aspect of C3's testimony is that he had said without reservation or qualification that no visit to or inspection of the subject land whatsoever had been made throughout the survey. He had completely refrained from even mentioning the detailed survey. He explained in his defence to the present application that the evidence was purely in relation to the PCP only and did not concern the DSP, which did not arise throughout his cross-examination. His evidence on this issue was, in my view, on an

objective evaluation, not merely false testimony but had crossed the line to the point of deliberate concealment of material facts amounting to obstruction or frustration of the course of justice.

[22] Every witness giving sworn testimony and litigant is duty bound not to mislead the court but to be truthful and honest. No litigant or witness should misdirect the court into believing in the existence of a certain state of things that is known to be false. The falsity, if only discovered subsequently, must be corrected at the appropriate stage before judgment. In the case of *Vernon v. Bosley (No 2)* [1997] 1 All ER 614 at 629 it was held:

> It is the duty of every litigant not to mislead the court or his opponent. He will obviously mislead the court if he gives evidence which he knows to be untrue. But he will also do so if, having led the court to believe a fact to be true, he fails to correct it when he discovers it to be false … Moreover, in my view the litigant does not discharge this duty simply accepting the advice of his legal advisers.

[23] It is trite law that each of case of alleged contempt has to be decided in reference to its own particular facts and circumstances. The categories of contempt are wide and not restrictive or closed. Of paramount importance is the factual matrix of the individual case in determining whether the particular circumstances call for the invocation of the law of contempt on the basis of interference with the due administration of justice (*Monatech (M) Sdn Bhd (supra)*). The Court of Appeal in *Murray Hiebert v. Chandra Sri Ram* [1999] 4 CLJ 65; [1999] 4 MLJ 321 accepted the correct test to be that to constitute contempt of court it is unnecessary to prove affirmatively that there has been actual interference with the administration of justice. It would suffice if the act or conduct complained of tends in any way to interfere with the proper administration of justice. Ahmad Fairuz JCA (later CJ) held:

> The correct test applicable in contempt proceedings had been applied by the trial judge. The term 'real risk' introduced in *Reg v. Duffy & Ors; ex p Nash* [1960] 2 QB 188 was never intended to qualify the tests used in earlier cases. Therefore, the trial judge was correct when he held that in order to constitute contempt of court, it is not necessary to prove affirmatively that there has been an actual interference with the administration of justice. It is enough if it is likely or it tends in any way to interfere with the

proper administration of justice (see p 332D-G); *PP v. The Straits Times Press Ltd* [1949] MLJ 246 and *Re Sin Poh Amalgamated Ltd & Ors* [1954] MLJ 152 followed.

[24] Among the foremost considerations in the context of the factual matrix of the instant case and the issues arising in this contempt action are the burden of proof of contempt and the blurring of distinction between false testimony *per se* which would be tantamount only to perjury and false testimony together with the deliberate suppression of evidence indicating an intention to interfere with the administration of justice that would be sufficient to constitute contempt of court. Having reviewed and examined the relevant part of C3's evidence at the trial pertaining to the vital issue in dispute carefully, the inescapable conclusions are these:

(a) C3 who testified in the trial at the instance and on behalf of C1, as well as on his own behalf, gave false testimony that he was instructed to only prepare a preliminary report or PCP of the site/subject land and thus, did not at any instance visit the site/subject throughout the survey. Neither did any of his subordinates or employees of Juruukur Abadi, visit or inspect the site which was blatantly false.

(b) From the false and misleading testimony and the suppression of vital and material evidence that a detailed survey had been done which would have invariably disclosed whether TNB had trespassed onto the land of the plaintiff/applicant, there was patently a manifestation of some form of intention on the contemnors' part to obstruct or interfere in course of justice. They had evinced an intention to do so by deliberately withholding to give a real or truthful answer to a vital issue in dispute that was not merely perjury simpliciter but took the case into the realm of contempt. Despite the invocation of litigation privilege at this stage to counter the allegation of having suppressed evidence, the fact of deliberate non-disclosure and suppression of evidence that, from an evaluation of all the circumstances, was by design and intentional, was undeniable. Non-disclosure of the fact that a DSP was obtained upon a detailed survey having been carried out was, in the circumstances adverted to, sufficient to constitute contempt as it was likely or tended to interfere in

A the due and proper administration of justice. No attempt was made or steps taken by C1 as the body which engaged the surveyor (C3) and produced him as a witness, to correct the highly misleading evidence of C3 on a very material fact in the case.

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Conclusion

[25] For the reasons aforesaid, I found that the charges of contempt of court preferred against the proposed contemnors ('C1 and C3') had been established beyond any reasonable doubt. C These contemnors had individually and collectively committed contempt of court by presenting false evidence and intentionally withholding material evidence from the court. This was clearly a case of not only false testimony but an evinced intention of obstruction or interference with the administration and course of D justice, which was the substance of the charges levelled against the contemnors. I, accordingly, found the charges of contempt of court had been proved against both proposed contemnors.

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